

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 491 of 2015**

{Arising out of Order dated 13.01.2015 passed in OA No. 1083 of 2010 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur}

Ramaswamy S/o Late Govind Swamy aged about 51 years, working as Section Supervisor, Employees Provident Fund Organization, Raipur, CG State R/o Asha Sadan, C/o Smt. Anpurna Budhapara, Raipur, CG 495009.

---- **Petitioner****Versus**

1. Union of India, Through Central Provident Fund Commissioner, (Employees Provident Fund Organization) Bikhaji Cama Place, New Delhi 110066
2. Employees Provident Fund Organization, Through Regional Fund Commissioner (Admn) Regional Office, Raipur, Chhattisgarh 495009
3. Regional Provident Fund Commissioner-I, Employees Provident Fund Organization, Raipur, Chhattisgarh 495009
4. Mahendra H Meshram working as Section Supervisor, Employees PProvident Fund Organization, Regional Office, Raipur Chhattisgarh 495009

---- **Respondents**

For Petitioner	: Shri K.R.Nair, Advocate.
For Respondent/Union	: Shri B. Gopa Kumar, Assistant Solicitor General
For Respondents No. 1&2	: Shri P. Chetan Kumar, Advocate, on behalf of Shri Sunil Pillai, Advocate.
For Respondent No. 4	: None

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Pritinker Diwaker, Judge

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****09/07/2018**

1. The writ application on behalf of the Petitioner has been filed assailing the decision dated 13.01.2015 passed by the Central Administrative Tribunal, Jabalpur, with Circuit Bench at Bilaspur (for short 'the Tribunal').
2. Original Application No. 1083 of 2010 was filed by the Petitioner assailing an order and the decision dated 22.11.2010 issued by the Respondent No. 3 i.e. the Regional Provident Fund Commissioner-1 who not only

modified or revised the previous decisions of the Departmental Promotion Committee (for short 'the DPC') dated 30.06.2005 by cancelling the regular promotion of the Petitioner but reversed him from the post of Section Supervisor on the basis of a review DPC held.

3. Shorn of other details, by virtue of certain arrangements which were *ad hoc* in nature and preparation of a seniority list, the DPC promoted the present Petitioner on the regular post of Section Supervisor after he put in similar nature of work for almost 5 years on *ad hoc* basis. From the narration of facts which are available on record, it emerges that a seniority list was drawn up earlier and that seniority list showed the present Petitioner senior to private Respondent No. 4. That seniority list, however, did not stand. It was because of the promotion granted from that seniority list that a dispute arose earlier which led to filing of Original Application No. 336 of 2003 by some of the employees, affected by the said seniority list, namely Jay Mohan and others, as well as Original Application No. 510 of 2004 by Ku. Jyoti Lakre and four others. The seniority list which was drawn up on the basis of the judicial order passed by the Tribunal in the two Original Applications were notified on 22.05.2008. In that seniority list, the Petitioner was shown at serial No. 23 and Respondent No. 4 at serial No. 19. The Respondent No. 4 was senior to the present Petitioner. Even though, Mr. Nair tried to convince us that by the length of service, his client was senior to Respondent No. 4, but keeping in mind that the seniority list dated 22.05.2008 has stood its ground, therefore, when Respondent No. 4 agitated the issue of his claim for grant of promotion, being senior to the present Petitioner, a revised DPC was required to be held and on the basis of seniority of Respondent No. 4 he had to be given the rightful claim to the post of Section Supervisor. Due to the non-availability of vacancies, the present Petitioner came to

be reverted.

4. The main argument on behalf of the counsel for the Petitioner against the order of the Central Administrative Tribunal which dismissed his OA was that the Tribunal overlooked the fact that opportunity of hearing was not given by the authorities before the order of reversion was passed or before the review DPC was held by the authorities. Since the said decision has civil consequences therefore, the minimum that the Tribunal should have done is to set aside the order of the revised DPC and give an opportunity of hearing to the Petitioner before a fresh decision could be taken by the authorities. The submission of the counsel for the Petitioner is attractive, however, the object behind grant of opportunity of hearing in no manner alters the factual position. The Petitioner has been the beneficiary of *ad hoc* arrangement and admitted position is that his seniority position was shown above Respondent No. 4 on the basis of an erroneous drawn up seniority list and the revised seniority list came into place after the results of the departmental examination was published. Since the necessary Rule which has been quoted by the Tribunal in the impugned order lays down that seniority list will depend upon the basis of performance in the departmental examination and such issues are not subject matter of any serious argument, the Tribunal rightly held that the earlier erroneous seniority list based on which the promotion was granted to the present Petitioner was required to be re-visited in light of the corrected seniority list dated 22.05.2008.
5. Since the learned counsel for the Petitioner did not succeed in establishing his case that the Respondent No. 4 is in any manner junior to him, merely giving him an opportunity of hearing will not alter the actual position with regard to his status on the seniority list. Since the right of a senior to be considered and granted promotion is also an important right

therefore, if the review DPC put the Petitioner in his rightful place and in absence of vacancy if he had to be reverted, he cannot make a grievance that his long continuance on the basis of earlier decision is detrimental to his interest so requires to be revisited.

6. If this Court is concerned about the right of the Petitioner to hold on to the promoted post, we are also concerned about the right of the senior who came to be denied promotion by non-consideration or non-grant in the earlier round of DPC which was held and which was not based on the correct seniority position of all the employees in question.
7. Another significant aspect which we have noticed is that the seniority list dated 22.05.2008 was never challenged by the Petitioner and therefore, his seniority stood below the Respondent No. 4 and if the illegality caused to Respondent No. 4 was restored by the revised DPC, the Tribunal committed no error by refusing to interfere with the impugned order dated 22.11.2010.
8. We must, however, compliment the counsel for the Petitioner in being truthful to the Court that even though he had lost his case before the Tribunal but in ground reality, due to shortage of hands, he is again back on the post of Section Supervisor on *ad hoc* basis and he still continues to exercise the same authority and derive the same perks and privileges after reversion order was passed.
9. Since the Tribunal has not committed any error in dismissing the Original Application which requires rectification, this writ application is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE